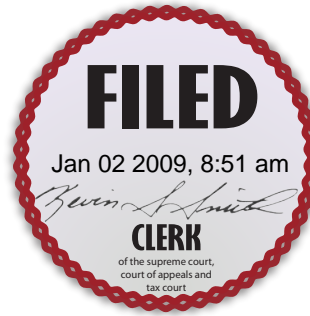


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

LAWRENCE D. NEWMAN
Noblesville, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana
Indianapolis, Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

AIMEE E. GROSS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)

No. 29A05-0808-CR-505

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel Pfleging, Judge
Cause No. 29D02-0601-FD-12

JANUARY 2, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Defendant-Appellant Aimee Gross appeals the sentences she received for her convictions of theft, a Class D felony, Ind. Code § 35-43-4-2, and criminal trespass, a Class A misdemeanor, Ind. Code § 35-43-2-2.

We affirm.

Gross presents two issues for our review, which we restate as:

- I. Whether the trial court's sentencing statement is deficient.
- II. Whether Gross' sentence is inappropriate.

In January 2006, Gross entered a Meijer store in Carmel. Gross had been informed previously that she was not allowed in the store, and she did not have permission to be there in January 2006. Once inside the store, Gross placed certain items in her cart, including alcoholic beverages and items of children's clothing. Gross proceeded through the do-it-yourself check-out lane and paid for only some of the items in her cart. She then attempted to leave the store with both the items she paid for and those she did not.

Based upon this incident, Gross was charged with theft and criminal trespass. Gross pleaded guilty and then failed to appear for her sentencing hearing. The court issued a warrant, and Gross was arrested. The trial court re-set Gross' sentencing hearing, and, at the hearing, the trial court rejected Gross' initial plea agreement. Subsequently, Gross pleaded guilty to both charges in an open plea. The trial court accepted Gross' plea and sentenced her to two years on her conviction of theft and one year on her conviction of criminal trespass, to be served concurrently. It is from these sentences that Gross now appeals.

Gross first contends that her sentence must be set aside because the trial court's sentencing statement was deficient. Specifically, she argues that the trial court, despite its statement that it found her criminal history as an aggravating factor, did not properly detail its reasons for imposing the particular sentence she received. Gross claims that there is a possibility that the trial court used her arrest record as the basis for enhancing her sentence.

Initially, we note that the trial court's sentencing determination will be reversed only for an abuse of discretion. *Mendoza v. State*, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007), *trans. denied*, 878 N.E.2d 213. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). When imposing sentences for felony convictions, trial courts must enter a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence. *Mendoza*, 869 N.E.2d at 555-56. A trial court abuses its discretion only when: (1) the trial court fails to provide any sentencing statement; (2) the sentencing statement includes reasons not supported by the record; (3) the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration by the defendant; or (4) the trial court's reasons are improper as a matter of law. *Id.* at 556.

Here, the trial court entered an oral sentencing statement at the conclusion of the sentencing hearing. The court stated that it found Gross' criminal history to be an

aggravating circumstance. The court also explained that it declined to find the proffered mitigating circumstance of mental health conditions because Gross chose not to take the medications that control her conditions. As a result, the trial court enhanced the advisory sentence by six months for Gross' Class D felony conviction.¹ The presentence investigation report clearly shows that Gross has five prior misdemeanor convictions, one of which is conversion. In addition, Gross was on probation at the time she committed the instant offenses. Moreover, while on bond in this matter, Gross was charged with two additional felony counts of theft in another county.

Although an arrest record is not evidence of criminal history, the information is relevant and is properly considered by a court in determining sentence. *See Rich v. State*, 890 N.E.2d 44, 54 (Ind. Ct. App. 2008), *trans. denied* (citing *Miller v. State*, 709 N.E.2d 48, 49 (Ind. Ct. App. 1999)). Furthermore, Gross points to nothing and we find nothing to suggest that the trial court used Gross' arrests, alone, to enhance the sentence. Therefore, we conclude that the trial court's sentencing statement was not inadequate.

Gross next argues that her two-year sentence is inappropriate in light of the nature of the offenses and her character. We have the authority to revise a sentence if, after due consideration of the trial court's decision, we determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). A defendant bears the burden of persuading the appellate court that his or her

¹ Ind. Code § 35-50-2-7 provides that "[a] person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 ½) years."

sentence has met the inappropriateness standard of review. *Anglemyer*, 868 N.E.2d at 494.

With regard to the nature of the offense, the advisory sentence is the starting point in our consideration of an appropriate sentence for the crime committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). The offense we are concerned with here is Gross' conviction of theft, a Class D felony. The advisory sentence for a Class D felony is one and one-half (1 ½) years. Ind. Code § 35-50-2-7. Gross received a sentence of two years for her theft conviction, which is only six months over the advisory sentence for an offense of that class. Further, the trial court sentenced her to one year on her conviction of trespass, as a Class A misdemeanor, but ordered it to be served concurrently to her sentence on her theft conviction. Additionally, the evidence put forth for the factual basis of Gross' plea shows that she was in a location where she had previously been told not to be, and she was stealing. Gross indicated that she stole clothes for her daughter and alcohol to sell for money because she did not have a job.

Turning to Gross' character, the presentence investigation report shows that Gross has previously been convicted of five misdemeanors. Only one of Gross' convictions, as she points out, is related to the instant offenses. That conviction is for criminal conversion, while the remaining four convictions are driving offenses. However, we note that Gross committed the instant offenses while on probation, which is a "substantial consideration" in our assessment of her character. *See Rich*, 890 N.E.2d at 54 (*citing Barber v. State*, 863 N.E.2d 1199, 1208 (Ind. Ct. App. 2007), *trans. denied*, 878 N.E.2d 208, for its holding that even if other aggravating circumstance was insignificant, trial

court would have acted within its discretion in ordering maximum sentences based on fact that defendant committed crime while on probation).

Gross has not carried her burden of persuading this Court that her sentence meets the inappropriateness standard of review. *See Anglemeyer*, 868 N.E.2d at 494. Although she has been given the opportunity to become a law-abiding citizen, Gross has failed to seize the opportunity and see it through. In light of the nature of the offenses and Gross' character, the sentence is not inappropriate.

Based upon the foregoing discussion and authorities, we conclude that the trial court's sentencing statement is not deficient, and Gross' sentence is not inappropriate.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.